

**JANE CROW: THE PATH TO 435
AN ANALYSIS OF CONGRESSIONAL
APPORTIONMENT IN THE UNITED STATES**

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“[WHITE] MEN:

*There is no beast, no rush of fire, like woman so untamed.
She calmly goes her way where even panthers would be shamed.*

[WHITE] WOMEN:

*And yet you are fool enough, it seems, to dare to war with me,
When for your faithful ally you might win me easily.”*

-LYSISTRATA¹

* J.D., Rutgers Law School-Newark 2025; Special thanks to Ms. Sona Sood, Ms. Kaitlin Byrd, Ms. Marissa Carvelli, Mr. Clay Ward, Professor Carlos A. Ball, Professor Alaina J. Thomas, Rutgers Law School-Newark, and the *Women's Rights Law Reporter*.

¹ ARISTOPHANES, *LYSISTRATA*, (Jack Lindsay trans., Project Gutenberg, eds. 2005) <https://www.gutenberg.org/cache/epub/7700/pg7700-images.html> [https://perma.cc/KTS6-L38E].

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INTRODUCTION

During the Constitutional Convention of 1787, delegates of the several States ratified a simple numerical restriction in Art. I, § 2, cl. 3 of the Constitution of the United States, to govern future apportionment of Representatives in the House: “The Number of Representatives shall not exceed one for every thirty Thousand[.]”² After a sufficient number of the several States ratified the Constitution, the 1st Congress proposed amending this specific simple numerical restriction with Article I of the Bill of Rights, per the requirements of Art. V of the Constitution.³ Subsequently, the 2nd Congress proposed an Apportionment Act which so blatantly violated this specific numerical restriction that it compelled President George Washington to issue the first Executive Veto of any Act of any Congress of the United States.⁴ In response, the 2nd Congress then imposed a new simple numerical restriction, by mere statute, to govern the future apportionment of Representatives in the House, without ever seeking the assent, ratification, or confirmation of any of the States.⁵ Later, the 7th, 12th, 17th, 22nd, 27th, 31st, 37th, 42nd, 47th, 51st, 56th, 62nd, 71st, 76th, and 77th Congresses imposed new and newer numerical restrictions, by mere statute, without ever seeking the assent, ratification, or confirmation of any of the several States.⁶ As a consequence, no State today receives the fair and obvious Number of Representatives in the House or Electors in the Electoral College that Art. I, § 2, cl. 3 entitles to each of them; instead, power over the liberties and properties of more than 330,000,000 United States citizens has been

² See U.S. CONST. art. I, § 2, cl. 3.

³ See U.S. CONST. art. V. On January 28, 1790, the General Assembly of the State of Delaware postponed ratification of Article I of the Bill of Rights, so it was not added to the Constitution as Amendment I on November 3, 1791. See *Delaware’s Ratification of the Bill of Rights ca. Jan. 28, 1790*, GEN. RECS. OF THE U.S. GOV’T, REC. GRP. 11, <https://www.docsteach.org/documents/document/delawares-ratification-of-the-bill-of-rights> [https://perma.cc/X28R-YGPV] (last visited Nov. 22, 2025).

⁴ See 3 ANNALS OF CONG. 539 (1792).

⁵ See *Apportionment Legislation 1790 – 1830*, U.S. CENSUS BUREAU, <https://www.census.gov/about/history/historical-censuses-and-surveys/census-programs-surveys/decennial-census/legislation-1790-1830.html> [https://perma.cc/SR32-YL95] (last updated Aug. 14, 2024).

⁶ *Id.*; see *Apportionment Legislation 1840 – 1880*, U.S. CENSUS BUREAU, <https://www.census.gov/about/history/historical-censuses-and-surveys/census-programs-surveys/decennial-census/legislation-1840-1880.html> [https://perma.cc/6DAB-4KXK] (last updated Aug. 14, 2024); *Apportionment Legislation 1890 – Present*, U.S. CENSUS BUREAU, <https://www.census.gov/about/history/historical-censuses-and-surveys/census-programs-surveys/decennial-census/legislation-1890-present.html> [https://perma.cc/L8LR-H73J] (last updated Aug. 14, 2024).

continuously placed in the trust of merely 435 Representatives and 538 Electors.⁷

When the men of the Second Continental Congress dissolved their political bonds with the State of Great Britain, they declared Independence from King George III under the auspices of self-evident truths: (1) all are created equal; (2) all are endowed with certain unalienable rights; and (3) to secure these unalienable rights, governments derive their just powers from the consent of the governed.⁸ The Slave States, in defiance of all of the principles of liberty, sought to exert undue influence over the government before then treasonously waging war upon it to preserve chattel slavery.⁹ Incensed by the 15th Amendment's grant of the elective franchise to formerly enslaved black men, these Confederate actors and their descendants conspired to perpetuate white supremacy by enfranchising white women and then preventing any increase in the total Number of Representatives in the House corresponding to any increase in the total population of the United States.¹⁰

This Note will proceed in eight parts. Part I will briefly discuss the History of the Declaration of Independence. Part II will briefly discuss the History of the Constitutional Convention, Antifederalist Arguments Against the Constitution, and Federalist Defenses of the Constitution. Part III will briefly discuss the History of the 1st Congress and Article I of the Bill of Rights, the Ratification of Article I of the Bill of Rights, and the Current Status of Article I of the Bill of Rights. Part IV will briefly discuss the History of the 2nd Congress and the First Executive Veto, as well as the History of the 7th, 12th, 22nd, 27th, 31st, and 37th Congresses. Part V will briefly discuss the Equal Protection of the Law, as well as the History of the 42nd,

⁷ See *Apportionment Legislation 1890 – Present*, *supra* note 6; *Electoral College*, USA.GOV, <https://www.usa.gov/electoral-college> [https://perma.cc/JN3C-R8YB] (last updated Jan. 13, 2025).

⁸ See *The Declaration of Independence: A Transcription*, NAT'L ARCHIVES, <https://www.archives.gov/founding-docs/declaration-transcript> [https://perma.cc/R6GR-XP52] (last updated Aug. 7, 2025).

⁹ In his memoirs, Ulysses S. Grant wrote, “Floyd, the Secretary of War, scattered the army so that much of it could be captured when hostilities should commence, and distributed the cannon and small arms from Northern arsenals throughout the South so as to be on hand when treason wanted them. The navy was scattered in like manner.” President Buchanan failed to “prevent his cabinet preparing for war upon their government, either by destroying its resources or storing them in the South[.]” Before “[t]reason in the executive branch of the government was estopped[,] the harm had already been done. The stable door was locked after the horse had been stolen.” See ULYSSES S. GRANT, *PERSONAL MEMOIRS OF U.S. GRANT* 226-27 (United Kingdom, C.L. Webster & Company, 1885). On December 24, 1860, the South Carolina legislature declared that “[a] geographical line has been drawn across the Union, and all the States north of that line have united in the election of a man to the high office of President of the United States, whose opinions and purposes are hostile to slavery.” See *Confederate States of America - Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union*, YALE L. SCH.: LILLIAN GOLDMAN L. LIBR., https://avalon.law.yale.edu/19th_century/csa_scarsec.asp [https://perma.cc/J8KQ-FY6E] (last visited Nov. 22, 2025).

¹⁰ See U.S. CONST. amends. XV, XIX; *Apportionment Legislation 1890 – Present*, *supra* note 6.

47th, 51st, 56th, and 62nd Congresses. Part VI will briefly discuss Antisuffragists versus Suffragists in the State of Georgia, the First Suffrage March in Washington, D.C., and the Ratification of the 19th Amendment in the State of Georgia. Part VII will briefly discuss the History of the 67th Congress, the *Quid Pro Quo* in Georgia, and the History of the 71st, 76th, and 77th Congresses. Finally, Part VIII will briefly discuss Current Apportionment.

I. INDEPENDENCE

A. History of the Declaration of Independence

On the evening of July 2, 1776, when the Second Continental Congress approved the Resolution for Independence, the original thirteen Colonies then and thereby became Free and Independent Sovereign States, each endowed with the “full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do[.]”¹¹ rejecting the divine right of King George III. The final text of their Declaration of Independence proclaimed these self-evident truths: “all . . . are created equal, [all are] endowed . . . with certain unalienable Rights, [and] among these [rights] are Life, Liberty and the pursuit of Happiness[.] [To] secure these rights, Governments are instituted[.] deriving their just powers from the consent of the governed[.]”¹²

II. DRAFTING AND RATIFICATION OF THE CONSTITUTION

A. History of the Constitutional Convention

According to later Congressional Records, Mr. James Madison argued in 1787 at the Constitutional Convention that “confining the right of suffrage to freeholders . . . violates the vital principle . . . of free government, that those who are to be bound by the laws ought to have a voice in making them.”¹³ Mr. Madison fervently believed,

the mass of citizens should not be without a voice in making the laws which they are to obey, and in choosing the magistrates who are to administer them. And if the only alternative be between an equal and universal right of suffrage for each branch of the Government, and a confinement of the entire right to a part of the citizens, it is better that those having the greater interest at stake, namely that on property and persons both, should be deprived of half their share in the

¹¹ See *The Declaration of Independence Transcript*, *supra* note 8.

¹² *Id.*

¹³ See CONG. GLOBE, 39th Cong., 1st Sess. 2767 (1866).

Government, than that those having the lesser interest, that of personal rights only, should be deprived of the whole.¹⁴

Essentially, Mr. Madison reasoned that those people without any property should also have a voice in Government, instead of merely those people with property.

On July 16, 1787, a bare majority of States voted (5–4–1) to compromise, agreeing on proportional representation in the House and on equality in the Senate.¹⁵ Mr. Madison's notes show that the bare majority of delegates had agreed "that in the original formation of [Congress] the [House] shall consist of [65] members[.]"¹⁶ The delegates further resolved, because

the present situation of the States may probably alter in the number of their inhabitants, [Congress] shall be authorized . . . to apportion [and] regulate the number of [Representatives] upon the principle of their number of inhabitants, according to the provisions hereafter mentioned, namely — provided always that representation ought to be proportioned[.]¹⁷

On September 17, 1787, delegates signed the final document and retired.¹⁸ The text provided that the "House of Representatives shall be composed of Members chosen . . . by the People . . . [and] apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the Whole Number of free persons, . . . three fifths of all other Persons."¹⁹ Further, the text provided that the "actual Enumeration shall be made within three Years . . . and within every subsequent Term of [10] Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed [1] for every [30,000.]"²⁰ Furthermore, the text provided that "Each State shall appoint . . . a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress[.]"²¹

¹⁴ *Id.*

¹⁵ See James Madison, *James Madison Papers: Subseries 5e, James Madison's Original Notes on Debates at the Federal Constitutional Convention*, LIB. OF CONG. (1787) <https://www.loc.gov/item/mss31021x001/> (on file with author).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See *The Constitution: How Did it Happen?*, THE U.S. NAT'L ARCHIVES AND RECS. ADMIN., <https://www.archives.gov/founding-docs/constitution/how-did-it-happen> [<https://perma.cc/T2BC-6FSR>] (last updated Nov. 28, 2023); *Meet the Framers of the Constitution*, THE U.S. NAT'L ARCHIVES AND RECS. ADMIN., <https://www.archives.gov/founding-docs/founding-fathers> [<https://perma.cc/WP7H-KGCR>] (last updated July 25, 2025).

¹⁹ U.S. CONST. art. I, § 2, cl. 1–3.

²⁰ U.S. CONST. art. I, § 2, cl. 3.

²¹ U.S. CONST. art. II, § 1, cl. 2.

Finally, the text provided that “Congress . . . shall propose Amendments . . . which . . . shall be valid . . . when ratified by the Legislatures of three fourths of the several States[.]”²²

B. Antifederalist Arguments Against the Constitution

On November 15, 1787, Brutus, an anonymous Antifederalist, published his third critique of the Constitution.²³ First, Brutus directed attention “to the main pillars upon which a free government is to rest; . . . [reasoning,] if the foundation is insecurely laid, and the main supports are wanting, or not properly fixed . . . [then] you ought to reject it.”²⁴ In his earlier manifestos, Brutus had attuned his readers to the principal defects in the Constitution by showing “that a consolidation of this extensive continent, under one government . . . is radically defective in a fundamental principle, which ought to be found in every free government; to wit, a declaration of rights.”²⁵ Now, in this third publication, Brutus wanted to show “that the powers are not properly deposited, for the security of public liberty.”²⁶ Regarding Congress, he wrote,

The first important object that presents itself in the organization of this government . . . is the legislature[,]. . . composed of [2] branches; the first to be called the general assembly, and is to be chosen by the people of the respective states, in proportion to the number of their inhabitants, and is to consist of [65] members, with powers in the legislature to encrease [sic] the number, not to exceed [1] for every [30,000] inhabitants.²⁷

In Art. I, § 2, cl. 3 of the Constitution, Brutus found merely “an appearance of justice, in the appointment of its members—but if the clause, which provides for this branch, be stripped of its ambiguity, it will be found that there is really no equality of representation[.]”²⁸ Here,

The words are “representatives and direct taxes, shall be apportioned among the several states, which may be included in this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons.”—What a strange and

²² U.S. CONST. art. V.

²³ See Brutus, No. 3, N.Y.J., Nov. 15, 1787.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

unnecessary accumulation of words are here used to conceal from the public eye, what might have been expressed in the following concise manner.²⁹

Put simply, "Representatives are [apportioned] among the states respectively, according to the number of freemen and slaves inhabiting them, counting [5] slaves for [3] free men."³⁰

Brutus invoked the philosophy of the renowned Montesquieu, who had said, "In a free state . . . every man, who is supposed to be a free agent, ought to be concerned in his own government, [and] therefore the legislature should reside in the whole body of the people, or their representatives."³¹ However, Brutus wrote, "it has never been alledged [sic] that those who are not free agents, can, upon any rational principle, have anything to do in government, either by themselves or others. If [those who are not free agents can] have no share in government, why is the number . . . in the assembly, to be increased on their account?"³² Brutus wondered, could it be because in the Slave States "a considerable part of the property of the inhabitants consists in a number of their fellow men . . . held in bondage, in defiance of every idea of benevolence, justice, and religion, and contrary to all the principles of liberty . . . avowed in the late glorious revolution?"³³ If this line of reasoning were accepted as

just ground for representation, [then] the horses in some of the states, and the oxen in others, ought to be represented—for a great share of property in some [States] consists in these animals; and [horses and oxen] have as much controul [sic] over their own actions, as these poor unhappy creatures, who are intended to be described in the above recited clause, by the words, "all other persons."³⁴

Brutus cautioned, by this method of apportionment,

the representatives of the different parts of the union, will be extremely unequal; in some of the southern states, the slaves are nearly equal in number to the free men; and for all these slaves, they will be entitled to a proportionate share in the legislature—this will give them unreasonable weight in the government, which can derive no additional strength, protection, nor [defense] from the slaves, but the contrary. Why then should they be represented?³⁵

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

In short, the Constitution would create a general assembly which “does not possess the qualities of a just representation, and . . . there is no kind of security . . . for its remaining in the hands of the people”³⁶ because of the outsized influence of the Slave States.

Further reflecting on the origin of free government, Brutus remarked, “the happiness of society is the end of government—that every free government is founded in compact; and that, because it is impracticable for the whole community to assemble, or when assembled, to deliberate with wisdom, and decide with dispatch, the mode of legislating by representation was devised.”³⁷ Brutus insisted that “a representation of the people of America, if it be a true one, must be like the people[;] . . . [one] man, or a few men, cannot possibly represent the feelings, opinions, and characters of a great multitude. In this respect, the new constitution is radically defective.”³⁸ Brutus elaborated, noting that this “extensive continent is made up of a number of different classes of people; . . . to have a proper representation of them, each . . . ought to have an opportunity of choosing their best . . . for the purpose; but this cannot possibly be the case in so small a number.”³⁹ In the assembly, “the farmer, merchant, [mechanic], and other various orders of people, ought to be represented according to their respective weights and numbers.”⁴⁰ Additionally, “the representatives ought to be intimately acquainted with the wants, understand the interests of the several orders in the society, and feel a proper sense and becoming zeal to promote their prosperity.”⁴¹ However, Brutus doubted that any such men in his State could be found who were “properly qualified in these respects to discharge such important duties[.]”⁴² Worse still, “supposing it possible to find them, is there the least degree of probability . . . the choice of the people will fall upon such men?”⁴³

Brutus predicted, by “the common course of human affairs, the natural aristocracy of the country will be elected[.] Wealth always creates [undue] influence[.]”⁴⁴ Here, in the House, Brutus believed, ultimately, “but few of the merchants, and those the most opulent and ambitious, will have a representation from their body—few of them are characters sufficiently conspicuous to attract the notice of the electors of the state in so limited a representation.”⁴⁵ Further, the “yeoman of the country cannot expect any of

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

their order in this assembly [because] the station [will be] too elevated for them to aspire to—the distance between the people and their representatives, will be so very great, that there is no probability that a [simple] farmer, however respectable, will be chosen[.]”⁴⁶ Furthermore, the mechanics of every branch “must expect to be excluded from a seat in this Body[,] ... a station too high and exalted to be filled by any but ... the rich[.]”⁴⁷ The “natural aristocracy” of the country would certainly govern unjustly, being “ignorant of the sentiments of the [middle] class of citizens, strangers to their ability, wants, and difficulties, and void of sympathy, and fellow feeling[.]”⁴⁸

Most distressingly, Brutus foresaw that the House would not only possess an “imperfect representation, but there will be no security in so small a body, against bribery, and corruption[.]”⁴⁹ Brutus found this vulnerability, here in Art. I, § 2, cl. 3 of the Constitution, because the Number of Representatives in the House would only

consist at first, of [65], and can never exceed [1] for every [30,000] inhabitants; a majority of these, that is, [33], are a quorum, and a majority of which, or [17], may pass any law—so that [17] men, will have the power to give away all the property of the citizens of these states—what security therefore can there be for the people, where their liberties and property are at the disposal of so few men?⁵⁰

Thus, the power of government would literally be placed “in the hands of the few to oppress and plunder the many.”⁵¹ Brutus foretold, “like all others of a similar nature, [this government] will be managed by influence and corruption, and that the period is not far distant, when this will be the case, if [this Constitution] should be adopted[.]”⁵²

Brutus could see that “the representation is merely nominal—a mere burlesque; and that no security is provided [in this Constitution] against corruption and undue influence. No free people on earth, who have elected persons to legislate for them, ever reposed that confidence in so small a number.”⁵³ By way of comparison, Brutus highlighted that the “British house of commons consists of [558] members; the number of inhabitants ... [8,000,000].”⁵⁴ Mathematically, “this gives [the British people] one member for a little more than [14,000], which exceeds double the proportion this

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

country can ever have[.]”⁵⁵ *Ergo*, Brutus found that “no security is provided [in this Constitution] that even this shadow of the right [to representation] will remain with the people.”⁵⁶ The initial Number would not allow for it.

C. Federalist Defenses of the Constitution

On February 15, 1788, Mr. James Madison then released Federalist Paper No. 55 in the New York newspapers.⁵⁷ As Publius, Mr. Madison responded there to the weight and force of those Antifederalist arguments predicting dangerously inadequate representation for the People in the Congress.⁵⁸ Mr. Madison first briefly summarized and then detailed the four primary charges which Antifederalists had just leveled against the Constitution regarding the total Number of Representatives in the House: (1) that “so small a number of [Representatives] will be an unsafe depositary of the public interests”; (2) that Representatives “will not possess a proper knowledge of the local circumstances of their numerous constituents”; (3) that Representatives “will be taken from that class of citizens which will sympathize least with the feelings of the mass of the people, and be most likely to aim at a permanent elevation of the few on the depression of the many”; and (4) that as “defective as the [Number] will be in the first instance, it will be more and more disproportionate, by the increase of the [People], and the obstacles which will prevent a correspondent increase of [Representatives].”⁵⁹

To counter these charges, Mr. Madison noted that “[within] three years a census is to be taken, when the number may be augmented to [1] for every [30,000] inhabitants; ... and augmentations may continue to be made under the above limitation.”⁶⁰ Notably, Mr. Madison took for granted “that the number of representatives [would] be augmented from time to time in the manner provided by the Constitution. On a contrary supposition, [if the number were ever not augmented according to this very restriction, Mr. Madison did] admit the [4th] objection to have very great weight indeed.”⁶¹ Mr. Madison wondered only if “the smallness of the number ... [was] a safe depositary for a limited and well-guarded power of legislating for the United States[.]”⁶² By his own admission, Mr. Madison insisted he could not “conceive that the people of America, ... [would] choose, and every second year repeat the choice of ... men ... disposed to form and pursue a scheme

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See THE FEDERALIST NO. 55 (James Madison).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

of tyranny or treachery.”⁶³ Instead, Mr. Madison flatly denied that there ever could be “in any short time, in the United States, ... men capable of recommending themselves to the choice of the people at large, who would either desire or dare, within the short space of [2] years, to betray the solemn trust committed to them.”⁶⁴

On February 19, 1788, Mr. Madison published Federalist Paper No. 56, Federalist Paper No. 57, and Federalist Paper No. 58, in the New York newspapers, to reinforce his prior defense of the Constitution’s provisions for Representation in Congress.⁶⁵ Therein, Mr. Madison praised the delegates to the Constitutional Convention for providing “that the progress of population may be accompanied with a proper increase of the representative branch[.]”⁶⁶ Mr. Madison reassured his readers that “[1] representative for every [30,000] [will] render the [House] both a safe and competent guardian of the interests which [will] be confided to it.”⁶⁷

Mr. Madison then addressed the fourth charge against the Constitution, which Antifederalists had “grounded on a supposition that the number of members will not be augmented from time to time, as the progress of population may demand.”⁶⁸ Having previously admitted in Federalist Paper No. 55 that this particular objection would have “very great weight indeed[.]”⁶⁹ if it was well supported, Mr. Madison insisted that the “number which is to prevail in the first instance is declared to be temporary. Its duration is limited to the short term of three years [and within] every successive term of [10] years a census of inhabitants is to be repeated.”⁷⁰ Mr. Madison stated, the unequivocal purposes of the specific terms in Art. I, § 2, cl. 3 of the Constitution were: (a) “to readjust ... the apportionment of representatives to the number of inhabitants”; and (b) “to augment the number of representatives at the same periods, under the sole limitation that the whole number shall not exceed [1] for every [30,000] inhabitants.”⁷¹

⁶³ *Id.*

⁶⁴ *Id.* In late January 1788, Mr. James Madison knew that men serving on the ratification committee in Massachusetts had participated in “Shay’s Rebellion against the state’s government. In other words, ... people whom the Constitution was meant to restrain would be sitting in judgment of it.” *See* THOMAS E. RICKS, *FIRST PRINCIPLES: WHAT AMERICA’S FOUNDERS LEARNED FROM THE GREEKS AND ROMANS AND HOW THAT SHAPED OUR COUNTRY*, 210 (2020).

⁶⁵ *See* THE FEDERALIST NOS. 56-58 (James Madison).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*; *see* THE FEDERALIST NO. 55, *supra* note 57 (James Madison).

⁷⁰ *See* THE FEDERALIST NO. 58, *supra* note 65 (James Madison).

⁷¹ *Id.*

III. THE BILL OF RIGHTS

A. History of the 1st Congress and Article I of the Bill of Rights

Per the terms of Art. VII, the Constitution took effect when the State of New Hampshire became the ninth State to ratify its terms on June 21, 1788.⁷² Accordingly, each of the several States then elected and certified Electors for the inaugural quadrennial United States Presidential Election of 1788-89.⁷³ Each Elector certified then cast two votes each for President; Mr. George Washington won with the unanimous support of all Electors.⁷⁴ As a result, Mr. Washington swore the inaugural Oath of the Office of the President of the United States on April 30, 1789.⁷⁵

Soon thereafter, Representative John Vining addressed the House on June 8, 1789, when Representative James Madison first offered a motion for the House to go into Committee on the business of proposed Amendments to the Constitution—the Bill of Rights.⁷⁶ Concerned with wasting the precious time of the House, Representative Vining demanded “every proposition which comes from [Representative Madison] on the science of Government” to be delivered then and there on the House floor, rather than waiting for the House to go into Committee as per Representative Madison’s preliminary motion.⁷⁷ Compelled thus to withdraw his initial motion to go into committee, Representative Madison then obliged and instead offered for the first time all of his Amendments to the Constitution which he thought were “proper for Congress to propose to the Legislatures of the several States[.]”⁷⁸ He proposed,

That in [Art. I], section 2, clause 3, these words be struck out, to wit: ‘The number of Representatives shall not exceed [1] for every [30,000], but each State shall have at least [1] Representative. and until such enumeration shall be made;’ and that in place thereof be inserted these words, to wit: ‘After the first actual enumeration, there shall be [1] Representative for every [30,000], until the number amounts to —, after which the proportion shall be so regulated by Congress, that the number shall never be less than —, nor more than —,

⁷² See U.S. CONST. art. VII; *Creating the United States: Convention and Ratification*, LIB. OF CONG. <https://www.loc.gov/exhibits/creating-the-united-states/convention-and-ratification.html#obj18> [<https://perma.cc/2DN2-QZ2W>] (last visited Nov. 15, 2025).

⁷³ See *Washington Papers. The Electoral Count for the Presidential Election of 1789*, UNIV. OF VA., <https://washingtonpapers.org/resources/articles/the-electoral-count-for-the-presidential-election-of-1789/> [<https://perma.cc/5UHA-Z3VW>] (last visited Apr. 18, 2026).

⁷⁴ *Id.*

⁷⁵ See *President George Washington’s First Inaugural Speech (1789)*, NAT’L ARCHIVES: MILESTONE DOCUMENTS, <https://www.archives.gov/milestone-documents/president-george-washingtons-first-inaugural-speech> [<https://perma.cc/NL4T-JHWY>] (last updated Feb. 6, 2024).

⁷⁶ See 1 ANNALS OF CONG. 446 (1789).

⁷⁷ See 1 ANNALS OF CONG. 448 (1789).

⁷⁸ *Id.*

but each State shall, after the first enumeration, have at least [2] Representatives[.]⁷⁹

At the first time of asking, Representative Madison notably offered the House a proposition to amend the Constitution such that: (1) the Numerical ratio would increase, the terms of which he left blank (“——”) for future debate and consideration; and (2) each State would have a minimum Number of “at least [2] Representatives” after the first census of 1790.⁸⁰

On September 29, 1789, the 1st Congress passed the Bill of Rights, 12 Articles to amend the Constitution, resolving that they “be proposed to the Legislatures of the Several States as Amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution[.]”⁸¹ In “Article the First” of the Bill of Rights, the 1st Congress proposed,

there shall be [1] Representative for every [30,000], until the number shall amount to [100], after which the proportion shall be so regulated by Congress, that there shall be not less than [100] Representatives, nor less than one Representative for every [40,000] persons, until the number of Representatives shall amount to [200]; after which the proportion shall be so regulated by Congress, that there shall not be less than [200] Representatives, nor more than one Representative for every [50,000] persons.⁸²

On February 25, 1791, in one of its final acts, the 3rd session of the 1st Congress resolved that, “until the Representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the states of Kentucky and Vermont shall each be entitled to choose [2] Representatives.”⁸³ Notably, the State of Kentucky and the State of Vermont each had the right to a Number of 2 Representatives in the House and 4 Electors in the Electoral College at their inception as States, which is a fair and obvious Number given their respective 1790 Apportionment Population Number(s) of 68,705 and 85,425.⁸⁴

⁷⁹ See 1 ANNALS OF CONG. 451 (1789).

⁸⁰ *Id.*

⁸¹ See Nat'l Archives, Engrossed Bill of Rights (Sep. 25, 1789), <https://www.archives.gov/research/guide-fed-records/groups/011.html> [<https://perma.cc/EJ7J-73S6>]; Delaware's Ratification, *supra* note 3.

⁸² Engrossed Bill of Rights, *supra* note 81.

⁸³ See *Apportionment Legislation 1790 – 1830*, *supra* note 5.

⁸⁴ *Id.*

B. Ratification of Article I of the Bill of Rights

By January 25, 1790, at least five of the 12 States had ratified Article I of the Bill of Rights.⁸⁵ However, on January 28, 1790, the State of Delaware then issued its own response. After considering the Bill of Rights which had been proposed to them by Congress, the General Assembly of Delaware resolved “that the [1st] Article be postponed.”⁸⁶ Despite postponing their ratification of Article I of the Bill of Rights, however, the General Assembly of Delaware then did “agree to the [2nd], [3rd], [4th], [5th], [6th], [7th], [8th], [9th], [10th], [11th] and [12th] Articles and . . . assent to, ratify, and confirm the same as Part of the Constitution of the United States . . . in the [14th] Year of the Independence of the Delaware State.”⁸⁷ The General Assembly of Delaware wrote this message on the original document which they had received from the 1st Congress, affixed the Great Seal of Delaware as testimony thereof, and sent it back.⁸⁸

On November 3, 1791, the State legislatures of Virginia and Vermont ratified Article I of the Bill of Rights.⁸⁹ At that moment, merely 10 of the 14 States had ratified Article I of the Bill of Rights.⁹⁰ But for the prior Act of the General Assembly of Delaware postponing its ratification, Article I of the Bill of Rights would then have otherwise surpassed the three-fourths requirement; *ergo*, Article I of the Bill of Rights was not then made an addition to and an amendment of the Constitution as Amendment I.⁹¹ Instead, on December 15, 1791, only Article(s) III, IV, V, VI, VII, VIII, IX, X, XI and XII of the Bill of Rights then became Amendment(s) I, II, III, IV, V, VI, VII, VIII, IX, and X of the Constitution, following their ratification by 11 of the 14 State legislatures.⁹²

On June 27, 1792, the State of Kentucky ratified Article I of the Bill of Rights, becoming the 11th of the 15 States to do so.⁹³ But for the prior Act of

⁸⁵ See *Pieces of History: The First Amendments to the U.S. Constitution*, U.S. NAT’L ARCHIVES (Sep. 25, 2019), <https://prologue.blogs.archives.gov/2019/09/25/the-first-amendments-to-the-u-s-constitution/> [https://perma.cc/YBR8-2J78].

⁸⁶ See John P. Kaminski et al., eds., *The Documentary History of the Ratification of the Constitution*, CTR. FOR THE STUDY OF THE AM. CONST., https://csac.history.wisc.edu/wp-content/uploads/sites/281/2024/05/DC10-05-04_Delaware_28Jan90.pdf [https://perma.cc/N336-PLZA] (last visited Nov. 15, 2025).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Jesse Kratz, *Pieces of History: The First Amendments to the U.S. Constitution*, U.S. NAT’L ARCHIVES (Sep. 25, 2019), <https://prologue.blogs.archives.gov/2019/09/25/the-first-amendments-to-the-u-s-constitution/> [https://perma.cc/A796-32RX]; U.S. CONST. art. V.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ See KY. HIST. SOC’Y, *Moments in Kentucky Legislative History: Presented by the Kentucky Historical Society*, https://apps.legislature.ky.gov/LegislativeMoments/moments05RS/01_web_leg_moments.htm [https://perma.cc/WR8G-AK6R] (last visited Nov. 15, 2025); U.S. CONST. art. V.

the General Assembly of Delaware postponing its ratification, Article I of the Bill of Rights would then have otherwise surpassed the three-fourths requirement;⁹⁴ *ergo*, Article I of the Bill of Rights was not then made an addition to and an amendment of the Constitution as Amendment XI.⁹⁵

No further States have ratified Article I of the Bill of Rights, to date.⁹⁶

C. Current Status of Article I of the Bill of Rights

Article I of the Bill of Rights remains active and any of the 39 State legislatures which have yet to ratify it may do so at any time. If merely 27 more of those State legislatures did ratify Article I of the Bill of Rights, without any further State(s) either joining or leaving the Union or revoking a prior ratification, or any other Amendment(s) being made to the Constitution, then at that moment Article I of the Bill of Rights would become an addition to and an amendment of the Constitution as Amendment XXVIII, only then and thereby superseding the Art. I, § 2, cl. 3 restriction that the “Number of Representatives shall not exceed [1] for every [30,000.]”⁹⁷ Until then, this Art. I, § 2, cl. 3 restriction alone governs the fair and obvious “whole” Number of Representatives and Electors entitled to each of the several States.⁹⁸

IV. THE FIRST EXECUTIVE VETO AND APPORTIONMENT *ANTEBELLUM*

A. History of the 2nd Congress and the First Executive Veto

In 1792, the 2nd Congress began to consider the question of future Apportionment of Representatives for the 3rd, 4th, 5th, 6th, and 7th Congresses.⁹⁹ On February 16, 1792, Representative Vining addressed the House to advocate for his own proposition on the matter, “the first article of which [was] that New Hampshire shall be entitled to [5] Representatives”¹⁰⁰ based on its 1790 Apportionment Population of 141,822.¹⁰¹ Simple math shows that his proposed Article plainly violated the simple numerical restriction that the “Number of Representatives shall not exceed [1] for every [30,000],”¹⁰² as it instead unduly provided the State of New Hampshire with about 1 Representative for every 28,364.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ See U.S. CONST. art. I, § 2, cl. 3; *id.* art. V.

⁹⁸ See U.S. CONST. art. I, § 2, cl. 3; *id.* art. V; *id.* art. II, § 1, cl. 2.

⁹⁹ See 3 ANNALS OF CONG. 407 (1792).

¹⁰⁰ *Id.*

¹⁰¹ See *Apportionment Legislation 1790 – 1830*, *supra* note 5.

¹⁰² See U.S. CONST. art. I, § 2, cl. 3.

Representative Madison objected, by noting that “Fractions will [still] exist ... on every possible plan[.] The Constitution refers to the respective numbers of the States, and not to any aggregate number.”¹⁰³ According to him, Representative Vining’s proposition broke “down the barriers between the State and General Governments, and [involved] a consolidation.”¹⁰⁴ Chastened, Representative Vining “said a few words to exculpate the friends of the proposition from the charge of inconsistency” and yielded.¹⁰⁵ Representative Oakes Ames summarized the dispute: “1st. You may not exceed [1] to 30,000. [2nd.] You may have as many as [1] to 30,000 of the whole number of the Union. [3rd.] Supposing the amendment ratified, you must have 100 members, if [1] to 30,000 will give them.”¹⁰⁶ Plainly, the unratified nature of Article I of the Bill of Rights affected their deliberations, because members of the House simply did not agree what text governed their actions, as shown by the official records from this debate.

The House subsequently voted on two failed considerations of an apportionment bill on February 20, before a majority then approved a bill on February 21, 1792, “for Apportionment of Representatives among the several States, according to the [1st] Enumeration.”¹⁰⁷ On March 23, 1792, a bare majority (31–29) of the House approved the withdrawal of any final objections to the amendments offered for this particular bill, which proposed increasing the total Number of Representatives in the House allotted to the several States for the 3rd, 4th, 5th, 6th, and 7th Congresses to 120 Representatives.¹⁰⁸

On April 5, 1792, the 2nd Congress then received a message in reply from President Washington, who had “maturely considered the Act passed by the two Houses, ... and [returned] it to [the] House, wherein it originated, with the following objections.”¹⁰⁹ In this unprecedented Veto, President Washington reasoned that the Constitution provided that

the number of Representatives shall not exceed [1] for every [30,000]; which restriction is, by the context, and by fair and obvious construction, to be applied to the separate and respective numbers of the States: and the bill has allotted to [8] of the States, more than [1] for [30,000].¹¹⁰

¹⁰³ See 3 ANNALS OF CONG. 407-408 (1792).

¹⁰⁴ See 3 ANNALS OF CONG. 408 (1792).

¹⁰⁵ *Id.*

¹⁰⁶ See 3 ANNALS OF CONG. 409 (1792).

¹⁰⁷ See 3 ANNALS OF CONG. 415-418 (1792).

¹⁰⁸ See 3 ANNALS OF CONG. 482-483 (1792).

¹⁰⁹ See 3 ANNALS OF CONG. 539 (1792).

¹¹⁰ *Id.* Eight States were allotted more than 1 for every 30,000: Connecticut; Delaware; Massachusetts; New Hampshire; New Jersey; North Carolina; South Carolina; and Vermont. See *Founders Online: III: From Thomas Jefferson, 4 April 1792*, NAT’L ARCHIVES AND RECS. ADMIN., <https://founders.archives.gov/documents/Washington/05-10-02-0118-0004> [<https://perma.cc/YR8Z-7MSB>] (last visited Apr. 18, 2025).

According to the Veto, the 2nd Congress acted in a manner utterly repugnant to the Constitution. Notably, President Washington specifically reasoned that the only numerical restriction found in Art. I, § 2, cl. 3 of the Constitution is to be applied fairly and obviously to the separate and respective Numbers of each of the several States.

Rebuffed, on April 7, 1792, the House then formed a new committee to prepare a bill “apportioning Representatives among the several States according to the first enumeration, at the ratio of [1] Representative for every [30,000] ... in the respective States[,]”¹¹¹ as Congress had been instructed by President Washington in his Veto. However, rather than fairly and obviously applying this simple numerical restriction to the separate and respective numbers of the several States per those instructions, a simple majority of this 2nd Congress then *de facto* increased that simple numerical restriction, without ever amending the Constitution by seeking the assent, ratification, and confirmation of “three-fourths” of the several States.¹¹²

Later that same month, the 2nd Congress statutorily resolved, after March 3, 1793, “the House ... shall be composed of members elected agreeably to a ratio of [1] member for every [33,000.]”¹¹³ Then, the 2nd Congress returned this revised apportionment bill to President Washington.¹¹⁴ Since this new bill did not again allot more than one for every 30,000 to any of the several States, President Washington did not renew his Veto. Unlike when the 1st Congress had offered Article I of the Bill of Rights to the several State legislatures for their ratification of it in addition to and as an amendment of the Constitution, the 2nd Congress did not then submit this Apportionment Act or its new “ratio of [1] member for every [33,000]” to any State legislature for their assent, ratification, or confirmation of it. Lacking judicial review in 1792, because it would not be invented until 1803, no State filed any lawsuit in any Court; *ergo*, no State disputed this initial statutory encroachment onto their entitled right to Representatives in the House and Electors in the Electoral College under Art. I, § 2, cl. 3 of the Constitution.¹¹⁵

¹¹¹ See 3 ANNALS OF CONG. 542 (1792).

¹¹² See U.S. CONST. art. V.

¹¹³ See 3 ANNALS OF CONG. 550 (1792); *Apportionment Legislation 1790 – 1830*, *supra* note 5; Act of Apr. 14, 1792, ch. 23, (1 Stat. 253).

¹¹⁴ *Id.*

¹¹⁵ See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (“[T]he particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void[.]”).

B. History of the 7th, 12th, 17th, 22nd, 27th, 31st, and 37th Congresses

On January 14, 1802, the 7th Congress statutorily resolved, after March 3, 1803, “the House ... shall be ... elected agreeably to a ratio of [1] for every [33,000.]”¹¹⁶

On December 21, 1811, the 12th Congress statutorily resolved, after March 3, 1813, “the House ... shall be ... elected agreeably to a ratio of [1] for every [35,000.]”¹¹⁷

On March 7, 1822, the 17th Congress statutorily resolved, after March 3, 1823, “the House ... shall be ... elected agreeably to a ratio of [1] for every [40,000.]”¹¹⁸

On May 22, 1832, the 22nd Congress statutorily resolved, after March 3, 1833, “the House ... shall be ... elected agreeably to a ratio of [1] for every [47,700.]”¹¹⁹

On June 25, 1842, the 27th Congress statutorily resolved, after March 3, 1843, “the House ... shall be ... elected agreeably to a ratio of [1] for every [70,680.]”¹²⁰

On May 23, 1850, the 31st Congress statutorily resolved, after March 3, 1853, “the House ... shall be composed of [233] members[.]”¹²¹ Unlike the Apportionment Acts which preceded it, this Act altered the method of congressional apportionment by abandoning any common fixed numerical ratio statutorily set by Congress itself. Therein, the 31st Congress resolved,

it shall be the duty of the Secretary of the Interior to ascertain the aggregate representative population of the United States, ... which ... he shall divide by the number [233], and the product of such division, rejecting any fraction of an unit, ... shall be the ratio, or rule of apportionment, of representatives among the several States under such enumeration[.]¹²²

The 31st Congress further instructed the Secretary of the Department of the Interior,

proceed, in the same manner, to ascertain the representative population of each State, and to divide the whole number of the representative population of each State by the ratio already determined by him as above directed; and the product

¹¹⁶ See *Apportionment Legislation 1790 – 1830*, *supra* note 5.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See *Apportionment Legislation 1840 - 1880*, *supra* note 6.

¹²¹ *Id.*

¹²² *Id.*

of this last division shall be the number of representatives apportioned to such State under the then last enumeration[.]¹²³

On March 4, 1862, during the Civil War, the 37th Congress statutorily resolved, after March 3, 1863, “the number ... of the House ... shall be [241].”¹²⁴

V. APPORTIONMENT *POSTBELLUM*

A. The Equal Protection of the Law

Soon after the end of formal military conflict between the United States and Confederate forces, on May 23, 1866, the Senate discussed a proposed 14th Amendment to the Constitution.¹²⁵ Senator Jacob Howard reported first that his committee believed “that it was necessary, in order to restore peace and quiet to the country and again to impart vigor and efficiency to the laws, . . . that the Constitution . . . ought to be amended.”¹²⁶ After reviewing the specific terms in the first section of the 14th Amendment, Senator Howard then clarified for his colleagues that it “relates to the privileges and immunities of citizens of the United States as such, and as distinguished from all other persons not citizens of the United States.”¹²⁷ *De jure*, prior to the Constitution, the citizens of the several States were

aliens to one another, for the reason that the several States before that event were regarded by each other as independent Governments, each one possessing a sufficiency of sovereign power to enable it to claim the right of naturalization; . . . The effect of this clause was to constitute *ipso facto* the citizens of each one of the original States [to be] citizens of the United States [by] birth or naturalization . . . in virtue of natural law which recognizes persons born within the jurisdiction of every country as being subjects or citizens of that country.¹²⁸

Senator Howard then highlighted that the

last two clauses of the first section of the amendment disable a State from depriving not merely a citizen of the United States, but any person, whoever he may be, of life, liberty, or property without due process of law, or from denying to him the equal protection of the laws of the State. This abolishes all class

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *See* CONG. GLOBE, 39th Cong., 1st Sess. 2765 (1866).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another.¹²⁹

According to Senator Howard, this constitutional requirement

prohibits the hanging of a black man for a crime for which the white man is not to be hanged. It protects the black man in his fundamental rights as a citizen with the same shield which it throws over the white man. Is it not time . . . that [Congress] extend to the black man . . . the equal protection of the law?¹³⁰

Lest anyone mistake him, Senator Howard clarified that “the first section of the proposed amendment does not give to either of these classes the right of voting. The right of suffrage is not, in law, one of the privileges or immunities thus secured by the Constitution[;] . . . [it] is merely the creature of law.”¹³¹ Thus, the committee had offered a second section to the proposed amendment, which “leaves the right to regulate the elective franchise still with the States, and does not meddle with that right.”¹³² Here, the State’s “basis of representation [in Congress] is numbers, whether the numbers be white or black; that is, the whole population except untaxed Indians and persons excluded by the State laws for rebellion or other crime.”¹³³ Senator Howard felt further “obliged to acknowledge . . . that this section of the amendment does not recognize the authority of the United States over the question of suffrage in the several States at all; nor does it recognize, much less secure, the right of suffrage to the colored race.”¹³⁴

Senator Howard asked his fellow Senators; “[W]hat is it likely will meet the general approbation of the people who are to elect the [State] Legislatures, three fourths of whom must ratify our propositions before they have the force of constitutional provisions?”¹³⁵ Elaborating on the new provisions in the second section of the proposed 14th Amendment, Senator Howard explained, under the Constitution *antebellum*,

while the free States were represented only according to their respective numbers of men, women, and children, all of course endowed with civil rights, the slave States had the advantage of being represented according to their number of the same free classes, increased by three-fifths of the slaves whom they treated not as men but property. [Slave States] had this advantage over the free States, that the bulk of their property in the proportion of three-fifths had

¹²⁹ See CONG. GLOBE, 39th Cong., 1st Sess. 2766 (1866).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

the right of representation in Congress, while in the free States not a dollar of property entered into the basis of representation.¹³⁶

Although the three-fifths principle would cease to exist, Senator Howard questioned if “recently slaveholding States, while they exclude from the ballot the whole of their black population, [should] be entitled to include the whole of that population in the basis of their representation, and thus to obtain an advantage which they did not possess before the rebellion and emancipation?”¹³⁷ Senator Howard objected strongly to this notion, therefore he and the other members of the committee had

thought it wiser to adopt a general principle applicable to all the States alike, namely, that where a State excludes any part of its male citizens from the elective franchise, it shall lose Representatives in proportion to the number so excluded; and the clause applies not to color or to race at all, but simply to the fact of individual exclusion.¹³⁸

Senator Daniel Clark interjected “to inquire whether ... if any State excluded any person, say as Massachusetts does, for want of intelligence, this provision [in the 14th Amendment] cuts down the representation of that State.”¹³⁹

Senator Howard affirmed that any exclusion of any person by any State for want of intelligence certainly cuts down the representation of that State. He reasoned,

no matter what may be the ground of exclusion, whether a want of education, a want of property, a want of color, or a want of anything else, it is sufficient that the person is excluded from the category of voters, and the State loses representation in proportion. . . . Experience has shown that numbers and numbers only is the only true and safe basis; while nothing is clearer than that property qualifications have an inevitable aristocratic tendency—a thing to be avoided.¹⁴⁰

Challenged further on this principle of representation, Senator Howard then read from

the Writings of Mr. Madison, whose reflections upon the right of suffrage were at once the most enlightened and profound, to show what were his ideas respecting the right of suffrage and the persons to whom it ought to be granted.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 2767.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

. . . Those who are to be bound by the laws ought to have a voice in making the laws.¹⁴¹

Senator Charles Sumner asked; “Is that [general principle of representation] applicable to all without distinction of color?”¹⁴²

Senator Howard enthusiastically replied; “Certainly it is, and whether they can read or write or not.”¹⁴³ He exhorted his colleagues:

Now, apply that great principle as broadly as it is laid down by Mr. Madison on the page from which I have read, and how can any man of true republican feeling, attached to the essential principles of our system of government, refuse the right of suffrage to the whole negro population as a class?¹⁴⁴

Senator Reverdy Johnson asked, “Females as well as males?”¹⁴⁵

After noting “Mr. Madison does not say anything about females[,]” Senator Howard then deflected; “Mr. Madison was old enough and wise enough to take it for granted that there was such a thing as the law of nature which has a certain influence even in political affairs, and that by that law women and children were not regarded as the equals of men.”¹⁴⁶ Thus,

Mr. Madison would not have quibbled about the question of women’s voting or of an infant’s voting. He lays down a broad democratic principle, that those who are to be bound by the laws ought to have a voice in making them; and everywhere mature manhood is the representative type of the human race.¹⁴⁷

Obviously, everyone did not agree with Senator Howard.¹⁴⁸

B. History of the 42nd, 47th, 51st, 56th, and 62nd Congresses

On February 2, 1872, the 42nd Congress statutorily resolved, after March 3, 1873, “the House . . . shall be composed of [283.]”¹⁴⁹

On February 25, 1882, the 47th Congress statutorily resolved, after March 3, 1883, “the House . . . shall be composed of [325.]”¹⁵⁰

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ See U.S. CONST. amend. XIX.

¹⁴⁹ See *Apportionment Legislation 1840 - 1880*, *supra* note 6.

¹⁵⁰ *Id.*

On February 7, 1891, the 51st Congress statutorily resolved, after March 3, 1893, “the House . . . shall be composed of [356.]”¹⁵¹

On January 16, 1901, the 56th Congress statutorily resolved, after March 3, 1903, “the House . . . shall be composed of [386.]”¹⁵²

On August 8, 1911, the 62nd Congress statutorily resolved, after March 3, 1913, “the House . . . shall be composed of [433]. . . . [If] Arizona and New Mexico shall become States . . . they shall have [1] each, . . . in addition to the number [433].”¹⁵³

VI. THE 19TH AMENDMENT

A. Antisuffragists versus Suffragists in the State of Georgia

Postbellum, women fought over the application of this democratic principle to themselves when defining the historical memory of the nation. Ms. Mildred Rutherford, a prominent Antisuffragist and a leader of the United Daughters of the Confederacy (UDC), claimed that those “who are working for [woman’s suffrage] are striking at a principle for which our [Confederate] fathers fought during the Civil War. Woman’s suffrage comes from the north and the west and from women who do not believe in state rights and who wish to see the negro using the ballot.”¹⁵⁴ Antisuffragists like Ms. Rutherford pointed directly to their Confederate traditions, insisting that “women did not need the vote in order to exert public influence.”¹⁵⁵

Alternatively, Suffragist champions like Mrs. Rebecca Latimer Felton believed that “granting the ballot to [white] women would [actually] secure white political hegemony and elevate southern civilization”¹⁵⁶ for future white generations. These Suffragists felt especially pained by the memories of “Reconstruction—when they believed ‘carpet-baggers’ and black politicians tormented the South[.]”¹⁵⁷ Therefore, Mrs. Felton organized an “exhibit of ‘real colored folks’ . . . ‘to show the ignorant contented darkey . . . [and] illustrate the slave days’ [at] the Chicago World’s Fair in 1893 . . . [in order] to repudiate [Ms.] Rutherford’s claims that woman suffrage would blaspheme the [Confederate] ‘lost cause.’”¹⁵⁸

Four years later, in August of 1897, at the annual meeting of the Georgia Agricultural Society on Tybee Island, Mrs. Felton “commenced her speech,

¹⁵¹ See *Apportionment Legislation 1890 – Present*, *supra* note 6.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ See JANE DAILEY, GLENDA ELIZABETH GILMORE & BRYANT SIMON, *JUMPIN’ JIM CROW: SOUTHERN POLITICS FROM CIVIL WAR TO CIVIL RIGHTS*, 129 (2000).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 130.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

‘Woman on the Farm.’”¹⁵⁹ Drawing from her “experience in farmer politics . . . as a militant supporter of various gender reforms[,] . . . Felton set out . . . to discuss her two deepest political commitments at once: the position of women in southern society and the economic difficulties faced by the family farm.”¹⁶⁰ Mrs. Felton argued, “women received next to nothing in return” for their farm labor, deliberately drawing “a parallel between the treatment of slave agricultural labor in the *antebellum* period and that of poor white farm women in the war’s aftermath.”¹⁶¹ “With the emancipation of the slaves, only the subordination of their [white] women”¹⁶² kept the white man’s ego from deflating.

Mrs. Felton directed white men to instead focus on the inner life of their farm, as “the ‘best crop a *man* ever raised in his life was a crop of good, obedient children.’”¹⁶³ Further, to protect the mothers of the white race, according to Mrs. Felton, “[if] white men could not . . . establish . . . equitable ‘manliness’ in their relation to their women, they could . . . still establish it by asserting their supremacy over black men.”¹⁶⁴ Demonizing black men as rapists, Mrs. Felton stated, “[if] it needs lynching to protect woman’s dearest possession . . . I say ‘lynch’ a thousand times a week if necessary.”¹⁶⁵ However, sexual predations by black men concerned Mrs. Felton less than “the fact that . . . black men had been granted that ultimate hallmark of ‘free manhood,’ the right to vote. Indeed, [Mrs.] Felton drew a direct connection between the supposed rape of white women and the exercise of the franchise by black men.”¹⁶⁶ She said, “the better educated, the more economically independent, the more politically empowered the black man became, the more likely he was to commit the ‘rape’ of white women.”¹⁶⁷ This former slave plantation mistress cried out, to those assembled; “Wake up, men of Georgia, . . . to the crisis now upon you!”¹⁶⁸ After her speech had concluded, the press widely reported that her performance “could not be termed otherwise than masterly.”¹⁶⁹ Her words would spread “like fire in dead grass

¹⁵⁹ See LeeAnn Whites, *Rebecca Latimer Felton and the Wife’s Farm: The Class and Racial Politics of Gender Reform*, 76 GA. HIST. Q. 354 (1992), <https://www.jstor.org/stable/40582540> [<https://perma.cc/BX7P-X5FP>].

¹⁶⁰ *Id.* at 355.

¹⁶¹ *Id.* at 358.

¹⁶² *Id.* at 359.

¹⁶³ *Id.* at 362.

¹⁶⁴ *Id.* at 368–69.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 371.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 368.

¹⁶⁹ *Id.* at 355.

all over the United States”¹⁷⁰ and then incite mass bloodshed across the nation.

Soon after, the editor of a North Carolina newspaper, Mr. Alexander Manly, addressed Mrs. Felton’s “Woman on the Farm” speech in a printed rebuttal, wherein he

pointed to the prevalence of interracial sex throughout the South’s history, including those [interracial sexual encounters] instigated by white men and willingly engaged in by white women. White Democrats in North Carolina [later] held up [Mr. Manly’s] editorial as an example of the perils of Black political power, using [his rebuttal of Mrs. Felton] as a pretext to carry out an insurrection and racial massacre in Wilmington [in 1898].¹⁷¹

Thereafter, Mrs. Felton boldly condemned “anyone who dared to question the South’s racial policies[.]”¹⁷² In 1899, after personally sanctioning the lynching of Mr. Sam Hose, before he “was taken captive, tortured and burned alive near Atlanta, [Mrs.] Felton told the *Atlanta Constitution* that he ‘may as well get ready to die.’”¹⁷³

Mrs. Felton knew that “if she was going to make an argument for poor white women [to gain the elective franchise], she had to mobilize the discourse of race to be a part of those conversations, . . . and she knew that by using racist, white supremacist ideology, she could make those arguments.”¹⁷⁴ As such, she then “readily embraced the virulent caricature that had been made of her, telling the *Morning News* about an ‘unwritten [Georgia] law’ that Black rapists should die ‘without clergy, judge or jury.’”¹⁷⁵ Quite plainly, Mrs. Felton wanted “to be a political player . . . engaged in . . . high politics [and she understood] the rules of the game.”¹⁷⁶ Meanwhile, as Mrs. Felton “promoted [the] lynching [of black men] to reel in Southern white men, Northern white suffragists . . . strategically embraced white supremacy as organizational policy . . . [and] adopted a states’ rights approach to suffrage, . . . as a way of maintaining white power.”¹⁷⁷

In the spring of 1913, their avatar finally arrived in the White House.

¹⁷⁰ See Laura Mallonee, *The Nation’s First Woman Senator Was a Virulent White Supremacist*, SMITHSONIAN MAG. (Nov. 21, 2022), <https://www.smithsonianmag.com/history/the-nations-first-woman-senator-was-a-virulent-white-supremacist-180981150/> [<https://perma.cc/SQ4H-MU7Z>].

¹⁷¹ See David B. Parker, *Rebecca Latimer Felton*, NEW GA. ENCYCLOPEDIA, <https://www.georgiaencyclopedia.org/articles/history-archaeology/rebecca-latimer-felton-1835-1930/> [<https://perma.cc/F2LJ-VGG4>] (last updated Oct. 17, 2022).

¹⁷² *Id.*

¹⁷³ See Mallonee, *supra* note 170.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

B. The First Suffrage March in Washington, D.C.

Mr. Woodrow Wilson emerged from the 32nd United States Presidential election of 1912 with merely 41.8% of the popular vote but a total of 435 out of the 531 Electoral College ballots cast, defeating incumbent President William Taft, former President Theodore Roosevelt, and Mr. Eugene Debs.¹⁷⁸ As his train pulled into Washington, D.C. on March 3, 1913, the first Southern-born President-elect since *antebellum* could not help but notice the “relatively thin crowd [which] greeted him and his family before a motorcade took them to a hotel.”¹⁷⁹ Peering out at the deserted streets, he then asked, “Where are all of the people?”¹⁸⁰

Unbeknownst to Mr. Wilson, on the other side of town, women were on the march. Organized by young Ms. Alice Paul, thousands of women had gathered to take “over Washington during the inaugural weekend [and] put [Mr.] Wilson on notice that women were rising up in ways never seen before.”¹⁸¹ The suffrage march itself ended in chaos, as men “violently disrupted [Ms.] Paul’s carefully and strategically planned peaceful event.”¹⁸² Nevertheless, the event succeeded in bringing a “new energy to the campaign for women’s suffrage and to [the] push for passage” of the long dormant *Susan B. Anthony Amendment*.¹⁸³

The next day, for the first time, 435 Representatives swore Oaths of Office to serve in the House, concurrent with Wilson’s inauguration as the 28th President of the United States.¹⁸⁴

¹⁷⁸ See *1912 Electoral Vote Tally*, NAT’L ARCHIVES (Feb. 12, 1913), <https://www.archives.gov/legislative/features/1912-election> [<https://perma.cc/KZ8Q-V6B3>].

¹⁷⁹ See Tina Cassidy, *On Their Shoulders: The Radical Stories of Women’s Fight For The Vote: Alice Paul, Woodrow Wilson, and the Battles for Liberty*, NAT’L PARK SERV., <https://www.nps.gov/articles/000/alice-paul-woodrow-wilson-and-the-battles-for-liberty.htm> [<https://perma.cc/85L9-4YRC>] (last updated Dec. 14, 2020).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See *1913 Woman Suffrage Procession*, NAT’L PARK SERV., <https://www.nps.gov/articles/woman-suffrage-procession1913.htm>. [<https://perma.cc/KW8Z-T22D>] (last updated May 18, 2025).

¹⁸⁴ Suffrage would ultimately come to define his Presidency, as women took increasingly provocative measures to force the issue to the front of the agenda. However, despite his campaign promises of equal treatment, President Wilson mandated that the federal civil service workforce be segregated by race (appointing prominent Southern Democrats to carry out that effect) and screened the film *Birth of a Nation* at the White House in 1915, inspiring the revival of the Ku Klux Klan and the carving of a Confederate monument onto the northern face of Stone Mountain in Georgia. See Morgan Foy, *How Woodrow Wilson’s racist policies eroded the Black civil service*, HAAS SCH. BUS.: U. CA., BERKELEY (Oct. 27, 2020), <https://newsroom.haas.berkeley.edu/research/how-woodrow-wilsons-racist-segregation-order-eroded-the-black-civil-service/> [<https://perma.cc/TN87-5MMW>]; Claire Haley, *Stone Mountain: Carving Fact from Fiction*, ATLANTA HIST. CTR. (Nov. 17, 2022), <https://www.atlantahistorycenter.com/blog/stone-mountain-a-brief-history/> [<https://perma.cc/S2BT-N7KS>].

C. Ratification of the 19th Amendment in the State of Georgia

On June 25, 1914, “for the first time, the question of enfranchising women received serious consideration in a Georgia legislative session.”¹⁸⁵ On that day, “Representative Barry Wright introduced a proposal to grant equal suffrage through an amendment to the State Constitution.”¹⁸⁶ On July 7, 1914, “the [Georgia legislature] conducted a hearing on Wright’s suffrage proposal [with an audience of about] [200] women and about [50] men[.]”¹⁸⁷

Suffragists spoke in favor of the proposal, arguing: (1) that “white women had as much right to vote as negro men[;]” and (2) “that woman suffrage would [ensure] white supremacy in the South because negro women would not be allowed to vote in white primaries.”¹⁸⁸ Mrs. Felton stated, “Why should our women not have the right to vote? ... I do not want to see a negro man walk to the polls and vote on who shall handle my tax money while I myself cannot vote at all.”¹⁸⁹ Antisuffragists meanwhile pressed forward with their counterargument that “woman suffrage was a threat to state rights.”¹⁹⁰ Ultimately, “the committee [then] voted [5] to [4] against the proposal and recommended to the [Georgia legislature] that it not pass.”¹⁹¹

The following year, these Suffragists and Antisuffragists continued to lobby the Georgia legislature either for or against their proposals. One of the Suffragist petitions noted, “the enfranchisement of the women of the south will enormously increase white supremacy. . . . In Georgia there are 110,590 more white women than negro women.”¹⁹² In front of a Georgia Senate committee on August 3, 1915, Suffragists further noted, *inter alia*, “Georgia women are placed in the class with lunatics, idiots, paupers, criminals, and aliens, and . . . [we] should be removed from that category through enfranchisement.”¹⁹³ Nevertheless, despite their petitions, Suffragists still “failed to win any concessions from the . . . [Georgia] legislature.”¹⁹⁴

For many more years, Suffragists continued to face fierce opposition in the Georgia legislature, while Antisuffragists successfully maintained their position that “the majority of the women in Georgia did not want to vote and that it would be undemocratic to force on the majority something they did not want.”¹⁹⁵ Ms. Rutherford insisted, the Suffragist “movement originated

¹⁸⁵ See A. Elizabeth Taylor, *The Last Phase of the Woman Suffrage Movement in Georgia*, 43 GA. HIST. Q. 17 (1959) (on file with the WRLR).

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 17.

¹⁸⁸ *Id.* at 17-18.

¹⁸⁹ *Id.* at 18.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at 19-20.

¹⁹³ *Id.* at 21.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 21-22.

with the pre-Civil War abolitionists and . . . was contrary to Southern ideals. She said that woman suffrage stood no chance in Georgia and that the issue had been raised merely as propaganda for the pending *Susan B. Anthony Amendment*.¹⁹⁶ Suffragists became resigned thereafter to the fact that “they stood little chance of winning any concessions from the [Georgia] legislature and their only hope lay in a Federal amendment.”¹⁹⁷ Even after the 19th Amendment passed Congress and “was submitted to the states for ratification[,] Georgia suffragists had no expectation of [Georgia]’s ratifying and merely hoped that no action would be taken.”¹⁹⁸

At a Georgia House hearing on July 7, 1919, following the introduction of “resolutions for the ratification of the *Susan B. Anthony Amendment*[,] [Georgia State] Representative Jackson amended his resolution to make it read ‘rejects’ the *Susan B. Anthony Amendment* [so that] a favorable report on the resolution . . . would be a report against ratification.”¹⁹⁹ The Georgia legislature then heard this threat from the Suffragists in attendance: “Don’t make Georgia the first state to reject the amendment. If you do the time will most certainly come when you will be ashamed of your action.”²⁰⁰ Only Ms. Rutherford spoke for the Antisuffragists, stating that she “considered the *Susan B. Anthony Amendment* only the [15th] Amendment under another name and warned against negro domination of the South.”²⁰¹ Following later votes in the Georgia legislature, “Georgia became the first state to reject the [19th] Amendment.”²⁰²

On August 26, 1920, despite all of the best efforts of the Antisuffragists and their allies in the Georgia legislature, the 19th Amendment took effect “when Tennessee became the [36th] state to vote in its favor.”²⁰³ Nevertheless, the State of Georgia “barred [all] women from voting in the 1920 election, as the amendment took effect after local voter registration and poll tax deadlines had passed.”²⁰⁴ Completely exasperated, Mrs. Felton declared that the Georgia legislators were absolutely “the most uncompromising woman-haters in the known world.”²⁰⁵

The State of Georgia did not ratify the 19th Amendment, until February 20, 1970.²⁰⁶

¹⁹⁶ *Id.* at 22.

¹⁹⁷ *Id.* at 23.

¹⁹⁸ *Id.* at 23-24.

¹⁹⁹ *Id.* at 24.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 25.

²⁰² *Id.* at 26-28.

²⁰³ See Mallonee, *supra* note 170.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See *Georgia and the 19th Amendment*, NAT’L PARK SERV., <https://www.nps.gov/articles/georgia-and-the-19th-amendment.htm> [https://perma.cc/4QWF-T7YU] (last updated Jan. 15, 2020).

VII. PERMANENT APPORTIONMENT

A. History of the 67th Congress

On October 14, 1921, the House debated an Apportionment Act which would have increased the size of the House from 435 to 460 Representatives based on the Apportionment Population Numbers from the census of 1920.²⁰⁷ On that day, Representative John Rankin addressed the House and offered his thoughts on the matter, as a member of the Census Committee which had proposed the bill.²⁰⁸ First, Representative Rankin made clear to his colleagues that he “was opposed to reporting any bill at all providing for the reapportionment of the membership of [the] House under the census of 1920.”²⁰⁹ Primarily, he argued, the population of his home State of Mississippi and the population of other similar “agricultural States” had “temporarily ... gone to the large cities of the North and East[.]”²¹⁰

Representative Rankin then turned to “the race question.”²¹¹ Earlier during the session that day, Representative George Tinkham had proposed offering an amendment “to cut down the representation of the Southern States because the Negroes in those States as a rule do not vote[.]”²¹² That proposal would “reduce Mississippi’s representation ... from [8] to [4] and would affect other Southern States accordingly.”²¹³ Representative Rankin asserted, “Congress has no more right to interfere with the representation of a southern State under the [14th] and [15th] amendments ... than it has to revise the school laws of Indiana or the tax laws of Pennsylvania or to regulate the internal affairs of any other state.”²¹⁴

According to Representative Rankin, “the [15th] amendment superseded and rendered nugatory, if not null and void, the [2nd] section of the [14th] amendment, so far as regulating representation is concerned.”²¹⁵ Representative Rankin then argued,

up until the passage of the [15th] amendment, if a State had passed a law that deprived the Negroes of the right to vote, the representation of that State could have been reduced in proportion as the male population of the negroes numbered to that of the male population of the State, but when the [15th] amendment was

²⁰⁷ See 67 CONG. REC. 6306, 6314-15 (1921).

²⁰⁸ *Id.* at 6315-17.

²⁰⁹ *Id.* at 6315.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

adopted, providing that no such law should be passed, it by implication repealed that part of the [14th] amendment or rendered it nugatory.²¹⁶

Quoting from the prior writings of “Hon. James G. Blaine, ... [Representative Rankin stated that] if a State should exclude the Negro from suffrage [then] the next step would be for the Supreme Court to declare that the act was unconstitutional and therefore null and void.”²¹⁷ Representative Rankin firmly believed, “Congress has no right to interfere with southern representation on account of [their] elections. That question [of whether Congress could “cut down the representation of the Southern States because the Negroes in those States as a rule do not vote”] has been settled ... for all time to come.”²¹⁸

Representative Rankin then invoked the rights of the white women of the United States. He stated, “while we are on that subject [of the “race question”], ... the time has passed when a man or party can successfully make political capital by holding out to the Negro the hope or promise of social or political equality.”²¹⁹ Representative Rankin specifically noted,

By a recent amendment of the Constitution the white women of this country were enfranchised; and mark my words, they are going to set the seal of eternal condemnation upon those individuals who attempt or propose to force upon them the curse of Negro equality. The white women of America have paid the awful penalty for the political mistakes of the carping demagogues who are continuously raising this question and abusing the South for pursuing the only possible course by which its white civilization could have been maintained.²²⁰

Representative Rankin warned the House,

They have had to suffer, and are still suffering, [because there] has not been a week ... in this Congress ... that the local papers have not carried the news of some white woman being outraged by some brutal Negro[.] The time has come when the white women of America are going to protect themselves at the ballot box against those irresponsible individuals who are willing to sacrifice them and their children by pandering to the baser passions of an inferior race.²²¹

²¹⁶ *Id.*

²¹⁷ *Id.* at 6316.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

To illustrate his point, Representative Rankin then referenced

the signed protest of 837 white girls, who would have been compelled to work under [a Negro appointed Register of the Treasury] or else give up their positions. It looked as if this appointment [of a Negro] would be made, in spite of all these poor [white] girls could do, until the various women's organizations throughout the country began to bombard this Capitol with their protests ... and the appointment was "indefinitely postponed."²²²

With her permission, Representative Rankin then read the letter of Mrs. O. J. Deeds into the Congressional Record. Therein, Mrs. Deeds described

the appointment of a Negro to the position of Register of the Treasury and a petition signed by six Hoosier white girls against the appointment. As a Republican, [Mrs. Deeds wished] to present the protest of ... every white woman of Indianapolis against any further Negro appointments to public office or placing them in any position of authority over white people.²²³

Mrs. Deeds explicitly stated,

it is not any love for the Negro that prompts the Republican Party to place him in an official position, but it is merely playing politics, pure and simple. You are playing it unwisely now, since [white] women have come into power, as [white women] universally abhor the Negro, having had sad occasion to know him[;] [White women] will not support any party who longer tolerates and affiliates with this irresponsible element.²²⁴

Mrs. Deeds continued, "[White women] do not need the Negro in politics, and [white women] do not intend to support any party who longer continues the nefarious practice of catering to him. ... You must realize that we are compelled to fight for our own protection."²²⁵

Mrs. Deeds said, white women "believe in segregation in our schools, and ... segregation in business and politics."²²⁶ To show their perspective, Mrs. Deeds then referenced a

State Senator [who] was asked how he would like for his daughter to be compelled to associate with a Negro child in school, and to show you how narrow-minded he was, he answered, "Well, my daughter does not attend the public school"; in other words, "What do I care about the white children who

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

are compelled to attend the public schools; my child's father is financially able to provide a private tutor, thereby eliminating the Negro contamination."²²⁷

Emphasizing the advice of the Chamber of Commerce for

a [white] man to own his home and become a useful citizen, [Mrs. Deeds asked about] the incentive for a [white] man to invest a lifetime savings in a home when a despicable Negro may be permitted to buy adjoining property, depreciating it to less than half its normal value, [while] it is taxed full value the same as if it were not depreciated by this Negro contamination.²²⁸

Rhetorically speaking, Mrs. Deeds wanted to know,

Do you think that [white women] are just going to grin and bear it and continue to uphold in power the politician who artificially gives the Negro the wrong conception of racial and social equality which causes him to invade the white residence sections where he is distinctly not wanted? No; a thousand times no!²²⁹

Mrs. Deeds explicitly warned the Congress of the United States, "[White women] have had enough. It is time for the deluded white man to wake up and protect his own."²³⁰

After reading this letter into the Congressional Record, Representative Rankin instructed his colleagues that it represented "the sentiments of practically the entire white womanhood of America, and [Mrs. Deeds] sounds a warning that no political party can afford to disregard. So much for that phase of the case; let us now turn to the question of reapportionment based on the census of 1920."²³¹ He proclaimed; "I have heard men regale this House by declaring that those who favor this bill want to increase the size of this body. I do not want to increase it; I want to leave it just as it stands."²³² Representative Rankin wanted to leave the Number at 435.

Later that day, the House rejected that bill.²³³

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ See 67 CONG. REC. 6348 (1921).

B. The *Quid Pro Quo* in Georgia

On September 26, 1922, Senator Thomas Watson suddenly died.²³⁴ Accordingly, Georgia Governor Thomas Hardwick appointed “a replacement to serve until a special election could be held [even though] his appointee would not actually ‘serve’ because Congress was not in session when Watson died, and the next session would not begin until after the special election.”²³⁵ However, in the wake of his own unsuccessful re-election campaign, Governor Hardwick coveted that vacant Senate seat for himself,

and he knew that the person he appointed would have a real advantage (as incumbent) in the special election. So rather than give an edge to a potential opponent, and to get on the good side of Georgia’s newly enfranchised women voters (whom he had offended by opposing the [19th] Amendment), [Hardwick] appointed the eighty-seven-year-old [Mrs.] Felton [on October 3, 1922].²³⁶

Governor Hardwick “wagered that a woman wouldn’t challenge him in the [special election] race and that appointing one would improve his popularity among women voters.”²³⁷ Mrs. Felton subsequently “endorsed Hardwick and assured him that Georgia’s women would ‘reward [him] at the ballot box.’ [However, despite this *quid pro quo*], Hardwick [ultimately] lost [the special election] to Walter F. George.”²³⁸ Nevertheless, “suffragists across the country [still] fought to see Felton seated, petitioning President Warren Harding to reconvene Congress early. [President] Harding initially refused [to relent to this pressure, but] then suddenly called an early session to pass a ship subsidy bill.”²³⁹ In turn, absent any objections, “Senator-elect George agreed to let [Mrs.] Felton take the [Oath] before him and briefly hold office[.]”²⁴⁰

On November 20, 1922, Mrs. Felton “entered the Senate Chamber on the arm of Hoke Smith, the former Georgia governor who [had] ... disenfranchised Black men in 1908. Draped in black silk and lace, [Mrs. Felton] blew a kiss to the women filling the gallery, then settled into an absent senator’s seat.”²⁴¹ However, Mrs. Felton would not take her Oath

²³⁴ See Parker, *supra* note 171.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ See Mallonee, *supra* note 170.

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

“until the next day, following a lengthy discussion of its legality by Nebraska Senator Thomas Walsh[.]”²⁴²

On November 22, 1922, Senator Rebecca Felton stood to speak for the first and only time, pledging that when the “women of the country come in and sit with you [Senators], ... you will get ability, you will get integrity of purpose, you will get exalted patriotism and you will get unstinted usefulness.”²⁴³ Although she “served just 22 hours and 25 minutes, never casting [one] congressional vote[.]”²⁴⁴ Senator Felton thereby holds the distinction as the first female Senator of the United States and as the last Congressperson to have owned chattel slaves.²⁴⁵

C. History of the 71st, 76th, and 77th Congresses

By the summer of 1929, the failure of the Congress to reapportion for “something like seven or eight years [had] become a national scandal.”²⁴⁶ On June 3, 1929, when again debating the outstanding matter of reapportionment and whether aliens should be included and counted in the upcoming census of 1930, the 71st Congress notably only considered the apportionment of either “435 Representatives” or “the existing number of Representatives”²⁴⁷ among the several States, lacking any new census Numbers to guide any other discussion thereof.

On June 18, 1929, the 71st Congress statutorily resolved, “An Act To provide for the [15th] and subsequent decennial censuses and to provide for apportionment of Representatives in Congress.”²⁴⁸ Therein, the 71st Congress stipulated,

the President shall transmit to the Congress a statement showing ... the number of Representatives to which each State would be entitled under an apportionment of the then existing number of [435] made in each of the following manners: (1) ... by the method used in the last preceding apportionment[;] (2) ... by the method known as the method of major fractions[;] and (3) ... by the method known as the method of equal proportions[.]²⁴⁹

On April 25, 1940, the 76th Congress statutorily resolved, “AN ACT To amend ‘an Act to provide for ... apportionment of Representatives in

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ See 71 CONG. REC. 2274 (1929).

²⁴⁷ *Id.* at 2262.

²⁴⁸ See *Apportionment Legislation 1890 – Present*, *supra* note 6.

²⁴⁹ Act of June 18, 1929, ch. 28, Pub. L. No. 13, § 22, Seventy-First Congress 21, 26 (1929).

Congress,' approved June 18, 1929[.]”²⁵⁰ Therein, the 76th Congress stipulated, “each State shall be entitled ... to the number of Representatives ... based upon the method used in the last preceding apportionment.”²⁵¹

On November 15, 1941, the 77th Congress statutorily resolved, “AN ACT To provide for apportioning Representatives in Congress among the several States by the equal proportions method.”²⁵² Therein, the 77th Congress stipulated, “the President shall transmit to the Congress a statement showing ... the number of Representatives to which each State would be entitled under an apportionment of the then existing number of [435] Representatives by the method known as the method of equal proportions[.]”²⁵³

VIII. SOVEREIGN RIGHTS

A. Current Apportionment

Today, several States are either considering or undergoing congressional redistricting.²⁵⁴ *De facto*, all of the several States currently use the wrong Number of Representatives when creating their congressional districts. Although the several States elected merely 435 total Representatives between them for the 119th Congress, when the Art. I, § 2, cl. 3 restriction that the “Number of Representatives shall not exceed [1] for every [30,000]” is applied to their separate and respective 2020 Apportionment Population Number(s), the several States may each have the following Number of Representatives in the 120th, 121st, and 122nd Congresses, respectively: **ALABAMA–167; ALASKA–24; ARIZONA–238; ARKANSAS–100; CALIFORNIA–1,319; COLORADO–192; CONNECTICUT–120; DELAWARE–33; FLORIDA–719; GEORGIA–357; HAWAII–48; IDAHO–61; ILLINOIS–427; INDIANA–226; IOWA–106; KANSAS–98; KENTUCKY–150; LOUISIANA–155; MAINE–45; MARYLAND–206; MASSACHUSETTS–234; MICHIGAN–336; MINNESOTA–190; MISSISSIPPI–98; MISSOURI–205; MONTANA–36; NEBRASKA–65; NEVADA–103; NEW HAMPSHIRE–45; NEW JERSEY–309; NEW MEXICO–70; NEW YORK–673; NORTH CAROLINA–348; NORTH DAKOTA–25; OHIO–393; OKLAHOMA–132; OREGON–141; PENNSYLVANIA–433; RHODE ISLAND–36; SOUTH CAROLINA–170; SOUTH**

²⁵⁰ See *Apportionment Legislation 1890 – Present*, *supra* note 6.

²⁵¹ Act of Apr. 25, 1940, ch. 152, Pub. L. No. 481, Seventy-Sixth Congress (1940).

²⁵² See *Apportionment Legislation 1890 – Present*, *supra* note 6.

²⁵³ Act of Nov. 15, 1941, ch. 470, Pub. L. No. 291, Seventy-Seventh Congress (1941).

²⁵⁴ See Act of Aug. 28, 2025, ch. 1, 89th Leg., 2d C.S., Tex. Gen. Laws 1 (2025); Proposition 50, 89th Leg., Reg. Sess. (Cal. 2025); S.B. 249, 2025 Gen. Assemb., Reg. Sess., (N.C. 2025); H.B. 1, 103rd Gen. Assemb., 1st Spec. Sess., (Mo. 2025).

DAKOTA–29; TENNESSEE–230; TEXAS–972; UTAH–109; VERMONT–21; VIRGINIA–288; WASHINGTON–257; WEST VIRGINIA–59; WISCONSIN–196; WYOMING–19.²⁵⁵

Any more Representatives respectively would violate the Constitution. Any less Representatives respectively would also violate the Constitution, as that would unduly deny each of the several States their full measure of Representatives.²⁵⁶ For example, if the State of Texas were to have exactly 973 Representatives in the 120th Congress, this Number of Representatives would be more than 1 for every 30,000 based on their 2020 Apportionment Population Number of 29,183,290; therefore, it would violate Art. I, § 2, cl. 3 of the Constitution, as this Number would unduly give the People of the State of Texas about one Representative for every 29,993. Whereas, if the State of Texas were to only have exactly 971 Representatives, that Number would unduly deny the People of the State of Texas the whole Number of Representatives that they may have according to the specific terms of Art. I, § 2, cl. 3 of the Constitution, even though that Number would amount to about one Representative for every 30,054. *Ergo*, the Constitution entitles the People of the State of Texas to a Number of exactly 972 Representatives.

This is simple math.

CONCLUSION

When Free and Independent States entered into a new federal compact in 1788, those States ratified a simple numerical restriction in the Constitution to govern their future allotment of Representatives in the House; “the Number of Representatives shall not exceed [1] for every [30,000].”²⁵⁷ Antifederalists forewarned the People of the several States about the certain dangers of such a small Number of Representatives, only for the Federalists to simply dismiss those very concerns as unfounded and instead offer bare assurances that the Number would always increase according to that simple numerical restriction. Still, the 1st Congress offered the several State legislatures an amendment to that specific simple numerical restriction, with Article I of the Bill of Rights, because the 1st Congress considered the right to Representatives in the House for each of the several States to be the foremost constitutional right of all. *De facto*, every Apportionment Act in the history of the United States has been repugnant to Art. I, § 2, cl. 3 of the Constitution, by unduly denying each of the several States their whole

²⁵⁵ See U.S. CONST. art. I, § 2, cl. 3; *Table 1. Apportionment Population and Number of Representatives by State: 2020*, U.S. CENSUS BUREAU, <https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-table01.pdf> [<https://perma.cc/Y62E-225G>] (last visited Apr. 18, 2026).

²⁵⁶ *Id.*

²⁵⁷ See U.S. CONST. art. I, § 2, cl. 3.

Number of Representatives as determined by the fair and obvious application of that specific simple numerical restriction to their separate and respective Apportionment Population Numbers at each decennial census to date. Therefore, according to that most fundamental “principle, supposed to be essential to all written Constitutions,”²⁵⁸ all of the Apportionment Act(s) are void.

The Number 435 cannot be found anywhere in the text of the Constitution, yet 435 has been the total Number of Representatives allotted for congressional apportionment after each decennial census since the day that President Wilson assumed Office in 1913. While he then embarked on his own campaign to racially segregate the federal government, concurrently many Suffragists successfully labored to secure the elective franchise for white women so that they could perpetuate white supremacy in partnership with white men. Once enfranchised, these Suffragists leveraged tactics of intimidation and coercion to actually prevent any increase in the Number of Representatives from 435 to 460 after the census of 1920. Ultimately, they created Jane Crow, the political system by which the same Number of 435 Representatives wield the power of government over the lives and liberties of the People of the several States.

To end Jane Crow, the People of the several States must first acknowledge that it exists. *De facto*, the United States lacks a republican form of federal government today, because the People of the several States are not represented in the House according to the simple numerical restriction in Art. I, § 2, cl. 3 of the Constitution. The People of the several States thus do not have the functional capacity to consent to their own federal Government, which today unduly deprives them of those very same unalienable rights which were articulated by the Founders in the Declaration of Independence in 1776. *Ergo*, by and through their Attorneys General, all of the several States must each act with urgent and necessary speed to secure their own particular *bona fide* sovereign rights in advance of elections for the 120th Congress, so that the People of each of the several States may consent to their own federal Government at least according to the simple numerical restriction in Art. I, § 2, cl. 3 of the Constitution.²⁵⁹ Otherwise, eventually the People of the several States may understandably “become so

²⁵⁸ See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

²⁵⁹ *Id.*; see *Wesberry v. Sanders*, 376 U.S. 1 (1964) (where the Court held that the “debates at the Convention make . . . one fact abundantly clear: that when the delegates agreed that the House should represent “people” they intended that . . . the number assigned . . . should be determined solely by the number of the State’s inhabitants. . . . While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution’s plain objective of making equal representation for equal numbers of people the fundamental goal for the House[.]”); U.S. CONST. art. I, § 2, cl. 3; *id.* art. III, § 2; FED. R. CIV. P. 4(i); FED. R. CIV. P. 5.1(a)(2); FED. R. CIV. P. 57; 28 U.S.C. § 2201.

[irredeemably] corrupted as to need [this] Despotie Government[:]"²⁶⁰ an ignominious conclusion to our experiment, indeed.

²⁶⁰ See Benjamin Franklin, Closing Speech at the Constitutional Convention (Sep. 17, 1787), THE FOUNDERS' CONST. 657 (Philip B. Kurland & Ralph Lerner eds., 1987).